APPENDIX

Opinion of the United States Court of Appeals for the Fourth Circuit, *Carmen Leverette v. Margaret Bell, et al.*, No. 00-1407 (April 12, 2000) A-1

Order Denying Petition for Rehearing and Rehearing En Banc in *Carmen Leverette v. Margaret Bell, et al.*, No. 00-1407 (May 11, 2000) A-16

Order of the United States District Court for the District of South Carolina, *Carmen Leverette v. The South Carolina Department of Corrections and Margaret Bell*, Civil Action No. 3:99-0501-10 (March 8, 2000) A-18

Amended Order of the United States District Court for the District of South Carolina, *Carmen Leverettev. The South Carolina Department of Corrections and Margaret Bell*, Civil Action No. 3:99-0501-10 (March 14, 2000)..... A-19

South Carolina Department of Corrections, Policy No. 1500.11 ..... A-21

PUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 00-1407

CARMEN LEVERETTE,
Plaintiff-Appellee,

v.

MARGARET BELL, in her individual capacity,
Defendant-Appellant,

And

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,
Defendant.

Appeal from the United States District Court for the District of South Carolina, at Columbia.
Matthew J. Perry, Jr., Senior District Judge
(CA-99-501-3)

Argued: December 8, 2001

Decided: April 13, 2001

Before WILKINSON, Chief Judge, and WILKINS and KING, Circuit Judges.

Reversed and remanded by published opinion. Judge King wrote the opinion, in which Chief Judge Wilkinson and Judge Wilkins joined.

COUNSEL

ARGUED: Vance Earle Drawdy, HAYNSWORTH, BALDWIN, JOHNSON & GREAVES, L.L.C., Greenville, South Carolina, for Appellant. James Lewis Cromer, CROMER & MABRY, Columbia, South Carolina, for Appellee. ON BRIEF: Scott Timothy Justice, HAYNSWORTH, BALDWIN, JOHNSON & GREAVES, L.L.C., Columbia, South Carolina, for Appellant. Edward C. Boggs, CROMER & MABRY, Columbia, South Carolina, for Appellee.

OPINION

KING, Circuit Judge:

Plaintiff Carmen Leverette, an employee of South Carolina's Wateree River Correctional Institution ("WRCI"), brought this suite against Margaret Bell, the Associate Warden of WRCI, alleging that Bell had violated her Fourth Amendment right against unreasonable searches and seizures by conducting a visual body cavity search of Leverette's person. Leverette seeks damages pursuant to 42 U.S.C. § 1983. Along with her § 1983 claim, Leverette advanced a common-law negligence claim against the South Carolina Department of Corrections ("SCDC"). Upon the defendants' motion for summary judgment, the district court rejected Bell's assertion of qualified immunity, and that assertion is the sole issue before us in this interlocutory appeal. Because we conclude that the challenged search was constitutionally permissible, we reverse the denial of

summary judgment and remand so that judgment may be entered in Bell's favor.

I.

A.

Leverette was hired by SCDC as a correctional officer in December 1990, and she transferred to the WRCI facility in 1992. In April 1998, she was promoted from correctional officer to program assistant, a non-uniformed position that she continues to occupy. Prior to her promotion, Leverette had been subjected to two strip searches, both of which were authorized by John Carmichael, Warden of WRCI, pursuant to the prison's efforts to interdict drugs and other contraband. The first such search was conducted in 1996, after an SCDC drug dog reacted to scents in Leverette's vehicle during a random search of all vehicles entering WRCI; that search, consisting of a strip, squat, and cough, was conducted by Bell and two female correctional officers and yielded no contraband. The second search, a visual body cavity search of Leverette, was carried out at WRCI on February 4, 1998, and is the subject of this lawsuit.

On February 2, 1998, a WRCI inmate informed Bell that some of the other prisoners had schemed to buy marijuana "on the street," and that Leverette was planning to smuggle the marijuana into the prison by concealing it in a tampon. The inmate-informant, whose identity has not been disclosed, had on prior occasions provided accurate tips to the Sumter County Drug Task Force and to SCDC Internal Affairs. Based on information obtained in a meeting Bell attended with members of the Drug Task Force and Internal Affairs, she believed the inmate's information concerning Leverette to be reliable.

That evening, Bell called her supervisor, Warden Carmichael, to relay the information obtained from the inmate's tip. After the call, but prior to Leverette's

scheduled return to work on February 4, Bell and Carmichael met to discuss the tip. In the course of their discussion, Carmichael directed Bell to conduct a strip search of Leverette upon the latter's arrival at work on February 4. Bell recalled raising the possibility that Leverette would be wearing a tampon and suggesting that a female medical professional be present, in light of the "personal" nature of the examination. J.A. 421. Bell further testified that no specific decision was made at that time as to what procedures to follow if a tampon were discovered.

Bell and Carmichael reconvened on the morning of February 4, in order to finalize the logistics and procedures of the search. It was then determined that the search of Leverette would be conducted in Bell's office and that a female nurse supervisor would be present, along with two female correctional officers. When Leverette arrived at WRCI to work, she was accompanied to Bell's office and advised by Carmichael that the prison had received a tip that she was carrying contraband. Before leaving the office, Carmichael stated, "[Y]ou know the procedure on this. We are going to have to do a strip search." J.A. 146-47.

Shortly after Leverette was so advised by Carmichael, the female correctional officers were beckoned to Bell's office to conduct the search. After the warden departed, the office door was closed; the blinds were drawn shut, and Leverette began to disrobe. Bell and the officers first searched Leverette's clothing and lunch container, but they detected nothing. Leverette testified that once her clothing and lunch container had been searched, she was told that they were waiting for the nurse because, Bell stated, "[W]e are going to do a body cavity search." J.A. 149. Still naked, Leverette was seated for four or five minutes until the nurse arrived.

In her deposition, Leverette described the activities that ensued:

> I stand up and they are surround[ing] me, [the nurse] and Ms. Bell, and they are not saying anything, but I know she said body cavity search. So I kind of like bend over and they are looking. And Ms. Bell said she can't see, so I bend over a little more, and she stated she couldn't see again. So I bend over a little more, and the third time she says she couldn't see, so I just bent all the way down and put my hand on the floor so she could see. And after that they are there.
>
> So after I bent over I went to sit down. So they are bent down. [The nurse] she is bent down. I am opening my legs and she is looking in my vagina and Ms. Bell said they couldn't see. So I opened my legs again and Ms. Bell said she couldn't see. So I opened them a third time and opened them as far as I could get them. I said, "Ms. Bell, how far do you want me to open them?" and after that they looked, and then [the nurse] looked up at Ms. Bell and just like nod her head like everything was okay, and that was it.

J.A. 150.

After getting dressed, Leverette asked who the informant was; Bell replied that it was an inmate but declined to reveal the informant's name. Bell then left the office briefly, returning "with a consent to be strip searched and a consent to be frisk searched." J.A. 151. Leverette recalled signing the frisk search area of the form; when it was noticed that the wrong section had been signed, Leverette complied with Bell's request that she complete a written strip search consent. Although Leverette requested a copy of the signed consent form, she apparently never received one.

B.

In February 1999, Leverette brought suit in the District of South Carolina against Bell, in her individual capacity, for violating Leverette's constitutional rights under the Fourth Amendment, and against SCDC, for negligence.[1] Following extensive discovery, the defendants filed a motion for summary judgment on all of Leverette's claims. Leverette assented to the voluntary dismissal, without prejudice, of her negligence claim, leaving only her § 1983 claim against Bell. Bell moved for summary judgment solely on the basis of qualified immunity. After hearing argument on the immunity issue, the district court denied Bell's motion for summary judgment, and Bell timely filed this interlocutory appeal. We possess jurisdiction over this appeal pursuant to the collateral order doctrine. *See Winfield v. Bass*, 106 F.3d 525, 528-29 (4th Cir. 1997) (en banc) ("To the extent that an order of a district court rejecting a governmental official's qualified immunity defense turns on a question of law, it is a final decision within the meaning of § 1291 under the collateral order doctrine[.]") (citing *Mitchell v. Forsyth*, 472 U.S. 511, 524-30 (1985) (other citations omitted)).

II.

We review de novo a district court's denial of summary judgment. *Hodge v. Jones*, 31 F.3d 157, 163 (4th Cir. 1994). Where, as here, the district court did not fully set forth the facts supporting its legal conclusion denying qualified immunity, we must review the materials submitted to the district court to determine what the record disclosed, viewing the facts in the light most favorable to the non-moving party. *See Winfield*, 106 F.3d at 533.

Before evaluating the merits of Bell's qualified immunity defense, we must establish her official status,

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[1]The negligence claim focused primarily on SCDC's failure to observe its own procedural protections regarding employee strip searched. *See infra* Part III.

i.e., whether she conducted the challenged search while acting within the scope of her authority as Associate Warden of WRCI. *See In re Allen*, 106 F.3d 582 (4th Cir. 1997). Although Leverette insists that, under *Allen*, Bell's actions in conducting the search were outside of the scope of her authority, we find this argument unpersuasive.

Allen instructs that "an official may claim qualified immunity as long as his actions are not clearly established to be beyond the boundaries of his discretionary authority." *Id.* at 593. The relevant consideration under *Allen*, though, is not whether the official's actions were a proper, or even legal, exercise of her discretionary authority. *See id.* at 594. ("If these were the relevant inquiries, any illegal action would, by definition, fall outside the scope of an official's authority. To equate 'the question of whether the defendants acted lawfully with the question whether they acted within the scope of their discretion' is 'untenable.'") (quoting *Sims v. Metro. Dade Co.*, 972 F.2d 1230, 1236 (11th Cir. 1992)) (internal citations omitted). Rather, we must ask whether a reasonable official in Bell's position should have known that the conduct was clearly established to be beyond the scope of her authority. *Id.*

As Leverette correctly observes, we have on occasion sought guidance from statutes and regulations in delineating the "outer perimeter" of an official's discretionary authority. *See* Appellee's Br., at 20-21 (citing *Allen*, 106 F.3d at 595).[2] While formal sources are

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[2]In *Allen*, we denied an immunity defense to the Attorney General of West Virginia, who had allegedly directed that an entity be incorporated in order to prevent an out-of-state organization from incorporating in West Virginia by the same name. Looking to West Virginia statutory provisions defining the responsibilities vested in the Attorney General, we concluded that the defendant could not reasonably have considered the incorporation of fictitious entities to fall within his carefully circumscribed authority. As such, he was acting not as the Attorney General, but as a private individual. *See* 106 F.3d at 598.

instructive, a defendant does not lose official status for purposes of qualified immunity analysis simply by failing to adhere to an agency's stated policies. Leverette urges us to treat Bell's alleged reference to the "body cavity search" – as well as her testimony that having Leverette squat and cough was "still within policy" – as probative of her knowledge that the search transgressed SCDC Policy 1500.11. That policy provides for strip searches of SCDC employees only if justified by "specific objective facts" and conducted according to its procedural guidelines. *See* J.A. 615. It explicitly states, however, that employees "will not be subjected to body cavity searches." J.A. 611.

The parties disagree as to the proper classification of the search that occurred in this case. While it appears to have been more invasive than a standard strip search – requiring the subject to disrobe, squat, and cough – it also does not qualify as a true body cavity search.[3] Thus, it is not clear that Bell engaged in conduct specifically precluded by SCDC policy. Moreover, to the extent that the search did not conform to SCDC procedures – for example, the inmate's tip was not "reduced to writing prior to or immediately subsequent to the approving authority's decision" – we are not inclined to regard such

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[3]Courts examining the constitutionality of physically intrusive searches have distinguished between strip searches, visual body cavity searches, and manual body cavity searches. A "visual body cavity search" requires the searched individual to expose her anal and vaginal cavities for visual inspection, whereas a "manual body cavity search" typically involves digital touching or probing by another person. *See, e.g., Blackburn v. Snow*, 771 F.2d 556, 561 n.3 (1st Cir. 1985). The SCDC policy proscribing employee body cavity searches does not, however, specify the scope of such prohibition. Elsewhere, the SCDC policy governing inmate searches contemplates manual searches. Even if, as Leverette emphasizes, the policy governing inmate searches is inadmissible, it does suggest that there was at least a factual questions as to whether the prohibition contained in Policy 1500.11 extended to visual body cavity searches.

nonconformance as sufficient to take Bell's conduct beyond the "outer perimeter" of her discretionary authority. In the context of an *Allen* analysis, an official's responsibilities are to be defined expansively. *See, e.g., Harbert Int'l v. James*, 157 F.3d 1271, 1282-83 (11th Cir. 1998) (noting that the inquiry must be "properly defined," looking at the general class of conduct, e.g., transporting and delivering prisoners, rather than the specific unlawful conduct alleged, e.g., improperly transferring prisoners or placing them in inadequate facilities). To regard noncompliance with internal policies as necessarily removing an official from the realm of immunity would, in effect, erode that crucial defense. *See Allen*, 106 F.3d at 594. There is no question that assistant wardens of correctional facilities routinely supervise searches – including strip searches and even, under some circumstances, body cavity searches – and, thus, that Bell was acting within the scope of her authority for *Allen* purposes.

III.

Under our *Allen* decision, Bell, as Associate Warden of WRCI, is clearly entitled to assert the defense of qualified immunity. Whether the defense is valid in Bell's case, however, requires us to conduct a two-step, sequential analysis. Initially, we must determine de novo whether the facts, viewed in the light most favorable to Leverette, establish the deprivation of an actual constitutional right. *See Hartley v. Parnell*, 193 F.3d 1263, 1268 (4th Cir. 1999) (citing *Wilson v. Layne*, 526 U.S. 603, 609 (1999)). If so, we proceed to consider whether that right was clearly established at the time of the purported violation. *Id.*[4]

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[4]The applicable authorities dictate that we analyze the constitutionality of the challenged search before addressing whether the law was "clearly established." Thus, we cannot bypass, and thereby evade, a constitutional determination wherever the law is uncharted or ambiguous. *See Milstead v. Kibler*, No. 00-1539, 2001 WL 256045, *3 (4th Cir. March

Leverette maintains that the February 1998 search constituted a deprivation of her Fourth Amendment right against unreasonable searches and seizures, and that a reasonable officer in Bell's position would have known that her conduct violated a "clearly established" right. To support this position, Leverette relies primarily on SCDC's explicit policy against subjecting employees to body cavity searches. Bell denies that she conducted a "body cavity search" as prohibited by SCDC policy. In any case, she contends that the search was reasonable, and that, even if ultimately ruled unconstitutional, the law was not "clearly established" at the time of the search. We agree with Bell, and we conclude that the search, as conducted, was reasonable and consistent with Leverette's Fourth Amendment rights.

In analyzing the reasonableness of a physically intrusive search, we must balance the government's need for the particular search against the invasion of personal rights entailed by the search. *See Bell v. Wolfish*, 441 U.S. 520, 559 (1979)). More specifically, we must evaluate "the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted." *Id.* at 559.

Although the parties quarrel as to the proper definition of the contested search – Bell resisting Leverette's contention that it constituted a "body cavity search," as specifically prohibited by SCDC policy – the reasonableness of the search cannot rest on semantics. Leverette has essentially conceded that a routine strip search would have been proper. *See* Appellee's Br., at 18 ("Had Bell simply asked Leverette to remove clothing,

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15, 2001) ("Were courts to rule on qualified immunity without determining the constitutionality of the challenged conduct, 'standards of official conduct would tend to remain uncertain, to the detriment both of officials and individuals.'") (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 844 n.5 (1998)).

squat and cough[,] this lawsuit may never have happened.") Instead, Leverette was allegedly told that a body cavity search was to be conducted and was encouraged to expose her anal and vaginal cavities for visual inspection. Whether this search constituted a "body cavity search," specifically prohibited by SCDC Policy, it appears in any event to have deviated from SCDC's strip search procedures. *See* SCDC Policy 2100.3-23, J.A. 615. That discrepancy does not, however, necessarily render the search constitutionally unreasonable.

While this court has not addressed the standard applicable to the authorization of visual body cavity searches on prison employees, our decision is informed by the Supreme Court's decision in *Bell v. Wolfish*, along with relevant decisions of our sister circuits. In *Bell v. Wolfish*, the Court upheld a prison's practice of conducting visual body cavity searches on inmates following every contact visit – that is, absent individualized suspicion. 441 U.S. at 560. Emphasizing the "unique" security concerns present in the prison context, the Court concluded that, "[b]alancing the significant and legitimate security interests of the institution against the privacy interests of the inmates," visual body cavity inspections may be conducted on inmates on less than probable cause. *Id.*

The Court's decision in *Bell v. Wolfish* made clear that the "unique security dangers" present in correctional facilities may justify even the most intrusive searches, and its conclusion also reflects, inter alia, the severely abridged privacy interests of prisoners. Thus, it leaves unresolved the circumstances and standards under which prison visitors and employees may be subjected to strip and body cavity searches. Several of our sister circuits, however, have examined issues concerning the privacy rights of prison visitors and employees, concluding that prison authorities must have at least a reasonable suspicion that the individual is bearing contraband before conducting an invasive search. *See, e.g., Spear v.*

Sowders, 71 F.3d 626, 630 (6th Cir. 1995) (regarding as "clearly established" the requirement that officials have reasonable suspicion before conducting strip or body cavity search of visitors, although authorities "need not secure a warrant or have probable cause"); *Blackburn v. Snow*, 771 F.2d 556, 562 (1st Cir. 1985) ("[A] rule requiring all prison visitors to submit to a body cavity strip search, without any predicate requirement of individualized suspicion or showing of special and highly unusual institutional need, cannot satisfy the Fourth Amendment."); *Thorne v. Jones*, 765 F.2d 1270, 1276 (5th Cir. 1985) (applying reasonable suspicion standard to strip searches of prison visitors); *cf. Sec. & Law Enforcement Employees v. Carey*, 737 F.2d 187, 204, 208 (2d Cir. 1984) (adopting reasonable suspicion standard for strip searches of correctional officers, but holding that a search warrant must be obtained before conducting a visual body cavity search).

We recognize that a prison employee such as Leverette does not forfeit all privacy rights when she accepts employment. Her expectations of privacy are, however, diminished in light of the prison's manifest interest in preventing the introduction of drugs, weapons, and other contraband. *See Sec. & Law Enforcement Employees*, 737 F.2d at 204. We consequently must reject Leverette's contention that this search was constitutionally impermissible. Instead, we conclude that prison authorities generally may conduct a visual body cavity search when they possess a reasonable and individualized suspicion that an employee is hiding contraband on his or her person. Our position on this point is bolstered by our sister circuits' decisions applying the reasonable suspicion standard to searches of prison visitors. *See, e.g., Spear*, 71 F.3d at 630; *see also Sec. & Law Enforcement Employees*, 737 F.2d at 204 (cataloguing the "significant parallels between visitors to correctional facilities and correction officers who work in them.").

We emphasize that reasonable suspicion is the minimum requirement, and point out that the more personal and invasive the search activities of the authorities become, the more particularized and individualized the articulated supporting information must be. In this instance, we are satisfied that the supporting information was more than adequate. The information was particularized and individualized, i.e., that Leverette was bringing contraband into the prison in a tampon on a specific occasion. *See, e.g., Hunter v. Auger*, 672 F.2d 668, 675 (8th Cir. 1982) (requiring, under reasonable suspicion standard, "individualized suspicion, specifically directed to the person targeted for the strip search" and "reasonable cause to believe that drugs or other contraband are concealed in the particular place they decide to search"). It also bore indicia of reliability, i.e., the inmate-informant had provided accurate drug-related tips in the past. *See, e.g., Spear*, 71 F.3d at 631 (reasonable suspicion satisfied where inmate-informant "had provided accurate and important information on at least one prior occasion").[5] Additionally, the decisionmaking process in this matter was entirely orderly and reasonable; Bell evaluated the information and consulted with her supervisor, Warden Carmichael, as to the proper handling of this difficult matter. Finally, the search itself, although exceedingly personal in nature, was administered in a sensitive and professional manner. The officials involved were all female, the search activity

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[5] As courts have observed elsewhere, an informant's status as a convicted felon does not necessarily impugn his reliability. *See Spear*, 71 F.3d at 631 n.3 ("[Plaintiff] makes much of the fact that the confidential informant was a convicted felon. However, a criminal conviction is a prerequisite for the role of prison informant.") Nor does the fact that no drugs were ultimately detected indicate the absence of reasonable suspicion; the reliability of a tip must not be evaluated in hindsight, but must be viewed at the time the search becomes necessary. *See, e.g., Lindsey v. Storey*, 936 F.2d 554, 559 (11th Cir. 1991) ("[M]ore is required than a mere hindsight determination of whether reasonable suspicion existed at the time of the seizure[.]").

was conducted in a private setting, and it was handled with dispatch. *See generally Bell*, 441 U.S. at 559 (requiring courts to evaluate the manner in which a strip search or body cavity search is conducted); *also Amaechi v. West*, 237 F.3d 356, 364 (4th Cir. 2001) ("[W]e have repeatedly emphasized the necessity of conducting a strip search in private."); *Justice v. City of Peachtree City*, 961 F.2d 188, 193 (11th Cir. 1992) (regarding the sex of the officers conducting the strip search as a relevant factor in evaluating its intrusiveness).

Leverette also emphasizes that Bell failed to comply with SCDC's internal policies regarding employee searches. Beyond the challenged physical intrusiveness of the search, Leverette objects that Bell waited nineteen days to reduce to writing the specific facts justifying the search, rather than recording them at the time the search was authorized. Leverette further notes that her signed consent was not obtained "until after the search was conducted, in clear contravention of SCDC Policy 1500.11." Appellee's Br., at 22. Once obtained, the consent form was improperly filed, in violation of SCDC's "standard operating procedure." *Id.*[6]

We find these contentions unavailing. That the search deviated from SCDC's formal policies and procedures does not render it unreasonable under the Fourth Amendment. Even if SCDC's policy against conducting body cavity searches on employees was violated here, such a violation does not in itself rise to constitutional dimensions.

IV.

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[6] The validity and effect, if any, of Leverette's written consent has not been raised on appeal by either party and is not before us. Its existence – and the manner and timing of its execution – is simply part of the factual scenario underlying this case.

Given our conclusion that no constitutional violation occurred, we need not reach the second step of the *Wilson v. Layne* qualified immunity analysis – that is, examining whether the law was "clearly established" at the time of the challenged conduct. *See supra* note 4. Bell was involved in a constitutionally permissible activity while acting in the scope of her authority as Associate Warden of WRCI, and she is therefore entitled to qualified immunity. Accordingly, we reverse the district court's order denying qualified immunity and remand for entry of judgment in Bell's favor.

REVERSED AND REMANDED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

(Filed May 11, 2001)

No. 00-1407
CA-99-501-3

CARMEN LEVERETTE

Plaintiff – Appellee

v.

MARGARET BELL, in her individual capacity

Defendant – Appellant

and

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Defendant

On Petition for Rehearing and Rehearing En Banc

The appellee's petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

For the Court,

/s/ Patricia S. Conner
Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION
(Filed March 8, 2000)

CARMEN LEVERETTE,	CIVIL ACTION NO. 3:99-0501-10
Plaintiff,	
vs.	
THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS and MARGARET BELL, in her individual capacity,	**ORDER**
Defendants.	

This matter is before the Court pursuant to a motion by the defendants for summary judgment. Upon consideration of the motion, the memoranda and the oral arguments of counsel, the Court has determined that the motion must be and is hereby *DENIED.*

IT IS SO ORDERED.

/s/ Matthew J. Perry Jr.
Matthew J. Perry, Jr.
Senior United States
District Judge

Columbia, South Carolina,

March 7, 2000

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION
(Filed March 14, 2000)

CARMEN LEVERETTE, Plaintiff,	CIVIL ACTION NO. 3:99-0501-10
vs.	
THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS and MARGARET BELL, in her individual capacity, Defendants.	AMENDED ORDER

This matter is before the Court pursuant to a motion by the defendants for summary judgment. At the hearing, the plaintiff abandoned the cause of action for negligence against the South Carolina Department of Corrections and consented to dismissal of the action without prejudice as to that defendant. Upon consideration of the motion, the memoranda and the oral arguments of counsel on the remaining issues, the Court has determined that the motion must be and is hereby denied.

IT IS SO ORDERED.

/s/ Matthew J. Perry Jr.
Matthew J. Perry, Jr.
Senior United States
District Judge

Columbia, South Carolina,

March 13, 2000

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
RESTRICTED

NUMBER: 1500.11 (15/11) / DATE: January 15, 1992

RESPONSIBILITY AUTHORITY: Deputy Commissioner For Operations

RELATED ACA/CAC STANDARDS: 2-2171, 2-4192, 2-4193, 2-4194, 2-4195, 2-4344

TITLE: Searches for Contraband

PURPOSE: To prescribe policy and procedures to govern the proper conduct of searches of SCDC facilities, inmate and others to detect contraband, prevent access to contraband by inmates, and thereby help ensure the safety and welfare of all inmates, employees and others assigned to and/or associated with this Agency.

POLICY: Searches of employees, inmates, visitors, and other persons as well as vehicles and facilities will be conducted to discover and/or preclude inmate possession of anything considered to be contraband and/or detrimental to the general safety and welfare of all concerned. Searches will be conducted in a professional manner and will not be made for the purpose of harassment.

PROCEDURAL GUIDELINES:

1. INDIVIDUALS AND VEHICLES SUBJECT TO SEARCH. All people, including SCDC employees, official visitors, vendors, contractors, inmates, and inmates' visitors; and all vehicles entering or leaving departmental property are subject to search.

2. SEARCHES - GENERAL. All searches of people will be conducted in a professional and courteous manner. Should force be necessary to search an inmate, a Use of Force Report will be prepared and submitted.

Force will not be used to search visitors, employees or any other people. However, refusal to submit to a search will constitute a reason to deny admission to a facility and/or a reason to eject the person from a facility and/or property. When an inmate's visitor refuses to submit to a search and/or permit a search of his privately owned vehicle, the visit will be denied and the Institution Head will be notified via a written report. When any other person refuses to submit to a search and/or permit a search of a privately owned vehicle, the Institution Head will be notified via a written report.

3. INMATE BODY CAVITY SEARCHES. SCDC Policy 2100.3-23 is the only authority for inmate body cavity searches. Other people, such as visitors, employees or any other persons, will not be subjected to body cavity searches.

4. VEHICLE SEARCHES. All vehicles and supplies entering or leaving the confines of a medium or maximum security institution shall be thoroughly inspected for concealed contraband and inmates. At minimum security facilities, the Institution Head will determine the method of such inspections. Every precaution shall be taken to ensure the vehicle or its contents do not afford a means of escape for an inmate from any institution of the SCDC. Employees are prohibited from utilizing tools or other instruments to open vehicle compartment. In cases where compartments cannot be opened by the vehicle driver or occupant, the visitor(s) will not be allowed to bring the vehicle into the secure areas that are accessible to inmates.

5. TYPES OF INDIVIDUAL SEARCHES: Individual searches will be limited to three types. They are:

a. Scan search, using a metal detector (where available)

b. Frisk search

c. Strip search

6. SEARCH OF MALES AND FEMALES. Searches prescribed in this policy apply equally to males and females. Strip searches performed on employees, visitors, and other individuals must be performed by an employee of the same sex as the person being searched. Strip searches of inmates must also be performed by an employee of the same sex as the person being searched except in extreme emergencies.

7. SEARCH OF EMPLOYEES. On duty and off duty departmental employees may be searched at the discretion of the Institution Head when entering, while within, and when departing an institution. The type search will also be at the discretion of the Institution Head. Likewise, an employee's privately owned vehicle may be searched while on state property at a SCDC facility. Employees who refuse to be searched and employees who refuse to permit their privately owned vehicle to be searched may be subjected to appropriate disciplinary action pursuant to SCDC Policy 200.2-1 Progressive Employee Discipline.

8. SEARCH OF INMATES. Inmates may be subjected to a scan search, a frisk search or a strip search. Additionally, their personal effects, their cells/room, their common living areas, their work areas and other areas may be subjected to unannounced and irregularly timed searches.

9. SEARCH OF INMATES' VISITORS. Inmates' visitors may be subjected to a scan search, a frisk search or a strip search. However, before an inmate's visitor is subjected to a strip search, authorization must be obtained from the Institution Head or in his/her absence, an assigned Deputy Warden, or when no Deputy Warden is present, from the assigned Captain. (Authority to authorize a strip search is not to be delegated below Deputy Warden/Deputy

Superintendent or the Captain level.) Prior to granting authorization to conduct a strip search, the authorizing official must ensure that available facts and/or reasonable suspicions exist to indicate that a specific visitor is attempting to introduce contraband into the facility. Additionally, the authorizing official must ensure that the visitor has completed the applicable parts of SCDC Form 19-95, Request for a Body Search, and consents in writing thereon to be strip searched.

10. SEARCH OF OTHERS. Other people such as official visitors, inspectors, vendors, contractors, inmates attorneys and volunteer workers may be subjected to a scan search, a frisk search or a strip search. However, a strip search will not be conducted until all provisions of the preceding paragraph are met. Likewise, the privately owned vehicles of people in this category may be searched while on state property. However, the authorization to conduct a search of a privately owned vehicle must be obtained beforehand from the Institution Head or in his absence from the next senior official on duty/on call.

11. SEARCH OF INMATE QUARTERS. When an inmate's quarters/living area is searched, the inmate should be present. If circumstances prevent the inmate's presence, at least two employees must be present during the search.

12. SEARCH OF AN ENTIRE FACILITY. When an Institution Head deems it necessary to conduct a search of the entire facility, advance approval will be obtained from the appropriate Regional Administrator. Except in emergency situations, these searches will be conducted after normal duty hours.

13. CRIME RELATED SEARCHES. In those instances where an inmate, or inmates, is/are suspected of committing an act or acts covered by criminal law, when a crime scene needs to be preserved, searches as prescribed in this policy may be conducted to detect and

preserve evidence and to help in solving possible crimes. However, such searches are to be authorized only by the Institution Head or his designee, except when in an emergency an immediate search is necessary. Under those conditions, the Institution Head will be fully informed as soon as possible after the search is made. Those authorities directing or authorizing searches under the provisions of this paragraph will ensure that safeguards are in place to prevent self-incrimination by all suspects prior to and during the search and to ensure continuous identification of accountability for detected evidence.

14. INMATES TO BE FRISK SEARCHED. All inmates in minimum, medium and maximum security facilities are subject to being frisk searched at any time. However, Institution Heads will ensure that inmates are not subjected to frisk searches as a harassment tactic.

15. PROCEDURES AND TECHNIQUES FOR FRISK SEARCHING INMATES. When preparing to frisk search an inmate, the searching officer will:

a. Ask the inmate to remove all the items in his pockets and place them in an area designated by the officer. (They must place these articles in an area away from where the search will be conducted and told, if wearing these items, to remove hat, belt, watch, coat and shoes.)

b. Require the inmate to stand still with his feet apart and his arms extended. (If the inmate is known to be or is considered a security risk, have him spread eagle against an object, wall, etc.).

c. Search all areas of the inmate's body and clothing.

d. Require the inmate to remove his/her shoes and socks. Search inside the shoes and socks and examine the bottom of each foot and shoe.

e. Examine headgear and all articles removed from pockets earlier.

If contraband is found on the inmate or there are suspicions that contraband is hidden on the body in such a way that a frisk search is inadequate, take the inmate to an area that will provide privacy and proceed with a strip search.

16. INMATES TO BE STRIP SEARCHED. An inmate may be strip searched anytime there is a reason to suspect that contraband is or might be concealed on his/her body. Also, as a deterrent measure, at irregular intervals in medium and maximum security facilities one or more inmates -- to include small groups of inmates -- may be randomly selected and subjected to a strip search even though there may not be a specific reason to suspect any of them. Otherwise, except as prescribed in a. through e. below, strip searches will be conducted only when probable cause exists. Furthermore, inmates in Work Centers, Pre-Release Centers and those inmate participants in other community residential programs will not routinely be subjected to strip searches. Inmates in the following categories will always be strip searched.

a. Newly arriving inmates from every source being processed (received) at medium and maximum security facilities.

b. Safekeepers and psychiatric patients, and all inmates returning to medium and maximum security facilities from counties after court or from Designated Facilities.

c. Inmates assigned to medium security facilities returning from outside locations.

d. Inmates returning from medium security visiting areas.

e. Inmates being processed for admission to a maximum security housing unit.

17. PROCEDURES FOR STRIP SEARCHING AN INMATE. When strip searching an inmate, two officers should always be present. Except in an extreme emergency, both of the officers must be the same sex as the inmate being searched. A strip-search will always be conducted in an area out of public view with a reasonable degree of sight and sound seclusion and as much privacy as security conditions permit. To conduct a strip search, the inmate will be required to remove all clothing, false teeth, artificial limbs, hair wigs, etc. Those items are to be closely searched, examined/inspected by one officer as they are removed while the other officer observes the inmate during removal. The search of the inmate's body will be conducted in a thorough and systematic manner.

18. PROCEDURES AND TECHNIQUES FOR FRISK SEARCHING EMPLOYEES, INMATES' VISITORS AND OTHERS. Employees, inmates' visitors and other people may be subjected to a frisk search at the discretion of the Institution Head. Frisk searches will be conducted as prescribed for inmates elsewhere in this policy. The searching officer should be the same sex as the person being searched. The contents of purses, handbags, briefcases and similar items will be searched. These items may be searched when employees, inmates' visitors, and other people are entering or departing the institution. When these items are searched, the searching officer does not have to be of the same sex as the owner of the items searched. Maximum use will be made of metal detectors (scanners) when they are available.

19. PROCEDURES AND TECHNIQUES FOR STRIP SEARCHING EMPLOYEES, INMATES' VISITORS AND OTHERS. Before an employee, an inmate's visitor or another person is asked to submit to a

strip search, the approving authority (Institution Head or in his absence, as assigned Deputy Warden/Deputy Superintendent, or Captain) must be given specific reasons to justify a strip search. The reasons must be more than vague suspicions. They must be based on specific objective facts supported by information from reliable sources that a specific person (the person to be searched) is attempting to introduce contraband into the institution. These specific objective facts are to be reduced to writing prior to or immediately subsequent to the approving authority's decision and held on file at the institution for subsequent review.

a. When the approving authority authorizes a strip search, the person to be strip searched will be asked to consent to the search by completing and signing SCDC Form 19-95, Request for a Body Search. If the person refuses to consent to the strip search, he/she will be asked to indicate his/her refusal by completing and signing SCDC Form 19-95. If the person will not sign the refusal, two employee witnesses will sign the form indicating the person would not sign. When a person refuses to consent to a strip search, he/she will be denied admission to the facility and/or will be ejected from the facility and/or property.

b. Employees, inmates' visitors and other people, except as described below for children, will be strip searched in the same manner as prescribed for inmates. Both officers must be the same sex as the person being searched.

c. Unless a child is emancipated, SCDC Form 19-95 must be completed by the parent or legal guardian of any child under the age of 18, and the parent or legal guardian must consent in writing thereon to the child being strip searched. The parent or legal guardian will be required to conduct the strip search of the child in the presence of two employees of the same sex as the child being searched. At no time during the strip search will SCDC employees touch the child. Should the parent or

legal guardian refuse to consent to the strip search of a child, he/she will be asked to indicate his/her refusal by completing and signing SCDC Form 19-95. If the parent or legal guardian will not sign the refusal, two employee witnesses will sign the form indicating the person would not sign. When a parent or legal guardian refuses to consent to a child being strip searched, he/she will be denied admission to the facility and/or will be rejected from the facility and/or property.

20. SEARCHES OF INMATES' QUARTERS AND AREAS FREQUENTED BY INMATES. Before an inmate is moved into a living area, the inmate and the living area will be searched. Additionally, the living area will be searched any time there is reason to suspect that contraband is concealed there. A complete shakedown of an inmate's quarters will include examination of such items as bars, grills, tables, doors, locks, windows, night stands, ventilators, condition of walls, floors, crevices, plumbing, and electrical equipment. Every unit of bars and grills will be tapped or shaken to determine whether they are loose or defective. Special attention will be given to such items as television sets, radios, and other personal electronic equipment, books, beds, bedding, and all other personal belongings including clothing. The inmate should be present during this search if circumstances permit. If not, at least two employees will be present.

a. Audio-visual equipment in medium-maximum security institutions will be searched upon the inmate's transfer to the institution and periodically thereafter as deemed necessary. Audio-visual equipment in minimum security institutions may be searched as specified in institutional policy. The inmate will be provided the necessary tools to dismantle the equipment him/herself, which will be done in the presence of a security officer. Should the inmate refuse to dismantle the equipment, it will be confiscated, and the inmate given the opportunity to either mail the equipment home (at his/her expense) or have it picked up. Security x-ray

equipment, if available at the institution, may be used in lieu of the above search procedures.

b. Visiting Areas: After each instance of visiting within the confines of a facility, a complete search of the visiting room(s) and adjacent rest rooms will be accomplished immediately upon termination of a visit.

c. Work Areas: Frequent searches and careful supervision of inmate workers will be accomplished. The work schedules and number of inmates employed as some job sites preclude a complete search of the job site during hours of operation. Therefore, a more thorough search of such activities can be accomplished during other than normal duty hours. Such searches will be accomplished at the discretion of the Institution Head.

d. Searches may be conducted in any other area of a facility or adjacent grounds at the discretion of the Institution Head.

21. TRAINING. All Correctional Officer Trainees will be thoroughly trained in all provisions of this policy and other related policies; and in the proper procedures and techniques for conduction frisk searches and strip searches. During the Basic Correctional Officer Training Course, all Correctional Officer Trainees will receive verbal and written instructions on how to conduct all types of searches. They will also be required to perform a frisk search under the direct supervisor of an instruction and their technique will be evaluated. An employee will not be assigned to duties requiring the conduct of searches -- including vehicle searches -- until all prescribed basic certification training relating to searches has been satisfactorily completed. This includes training prescribed in the Basic Correctional Officer Training Course as well as on-the-job training at institutional level as specified by the Institution Head. Furthermore, Institution Heads will ensure that other employees with primary duties relating mainly to

contraband control and coordination of visitors' entry and egress at a facility undergo specialized training in all provisions of this policy with special emphasis on diplomacy, professionalism and the maintenance of good public relations during the administration of the provisions of this policy.

22. INSTITUTION POLICY. Each Institution Head will develop and publish an institution policy prescribing policy and specific procedures to be followed at institution level when conducting searches for contraband. Regional Administrators will review and approve each institution's policy.

23. AVAILABILITY OF WRITTEN POLICY. Copies of this policy, copies of the institution policy and related implementing instructions will be issued to, and kept readily available in the work areas of all institutional employees whose main duties are related to contraband control and coordination of visitors entry and egress at a facility.

/s/ Parker Evatt
Parker Evatt